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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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WM. H. MOORE, JR., as Trustee in Bankruptcy of the  
Estate of BENJAMIN C. CRANDALL, Bankrupt,  
Petitioner,  
vs.  
NELLIE M. CRANDALL, Claimant,  
Respondent.

In the Matter of BENJAMIN C. CRANDALL, Bankrupt.

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Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,  
Approved July 1, 1898, to Revise, in Matter of  
Law, a Certain Order of the United States  
District Court for the Southern District  
of California, Southern Division.

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FILED

FEB 28 1913



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals in and  
for the Ninth Circuit.*

**IN BANKRUPTCY.**

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Petition to Revise in Matters of Law an Order  
Allowing Claim of Nellie M. Crandall.**

To the Honorable Judges of the United States Circuit  
Court of Appeals, in and for the Ninth Circuit:

The petition of Wm. H. Moore, Jr., respectfully  
represents that he is and was at all times herein  
mentioned the duly elected, qualified and acting  
trustee of the estate of Benjamin C. Crandall, bank-  
rupt:

That on the 4th day of June, 1912, Nellie M. Cran-  
dall, the wife of said bankrupt, filed a claim for  
\$2,104.25 in the above-entitled matter against the  
estate of her husband, the said Benjamin C. Cran-  
dall, with Lynn Helm, Esq., one of the Referees in  
Bankruptcy in and for the District Court of the  
United States, Southern District of California,  
Southern Division; a certified copy of said claim is  
filed and made a part hereof, marked Exhibit No. 1.

That thereupon your petitioner, as trustee of the  
estate of the said Benjamin C. Crandall, bankrupt,  
entered oral objections to that portion of said claim,  
the consideration of which is based upon services  
rendered by said claimant to said bankrupt, on the  
ground that said claimant as the wife of said bank-  
rupt was not entitled to prove a claim against the

said estate for services rendered by [1\*] her to her husband, while they are living together as husband and wife.

That thereafter, upon due hearing of said claim and the objections thereto, by an order of said Referee in Bankruptcy, said claim was allowed for the sum of \$1,325.00, the said sum being the amount of money loaned to said bankrupt by said claimant with interest, to which allowance your petitioner takes no exception, and said claim was disallowed by said Referee for the unpaid balance due for services rendered, by said claimant to said bankrupt. That a copy of said order of said Referee upon the claim of said Nellie M. Crandall is made a part of and included in the certificate of Referee upon review of said order hereinafter referred to. That a certified copy of said certificate of Referee upon review is made and filed as a part hereof, marked Exhibit No. 2.

That thereafter, to wit, on the 15th day of June, 1912, said claimant filed his petition with said Referee in Bankruptcy for a review by the District Judge of said order disallowing that portion of said claim which is based upon the balance due for services rendered to said bankrupt. A certified copy of said Petition for Review of said Order of said Referee is made and filed as a part hereof, and marked Exhibit No. 3.

That thereafter, and on the 22d day of June, 1912, the said Lynn Helm, Esquire, Referee in Bankruptcy as aforesaid, filed in the office of the clerk of

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\*Page-number appearing at foot of page of original certified Record.



said District Court, his certificate upon said Petition of said Nellie M. Crandall for review of said order, which certificate is hereinabove referred to, and a certified copy thereof attached, made and filed as a part hereof, and marked Exhibit No. 2 as aforesaid. [2]

That thereafter, said matter was duly and regularly set down for hearing before said District Court, and the said matter having been argued and duly submitted to the Honorable Olin Wellborn, Judge of said District Court, said Court entered an order reversing the order of said Referee and allowing that portion of said claim which is based upon the balance due for services rendered by said claimant to said bankrupt. That a certified copy of said order of said District Court reversing said order of said Referee is made and filed as a part hereof, marked Exhibit No. 4.

Your petitioner further says that he is aggrieved by the order of said District Court reversing the order of said Referee, and is injured thereby, and that the errors complained of consist:

First: In holding that the claimant, as the wife of said bankrupt, was entitled to prove a claim for services rendered to said bankrupt in his business while they are living together as husband and wife.

Second: In holding that the contract for services upon which said claim is based was not illegal.

Third: In holding that the contract for services upon which said claim is based was not void.

Fourth: In holding that the contract for services upon which said claim is based is not prohibited by

the public policy of the State of California.

Fifth: In holding that said bankrupt, as the husband of said claimant, was not entitled to the services of claimant without compensation therefor.

Sixth: In holding that the earnings of said claimant for services rendered to bankrupt did not constitute community property as defined by the statutes of the [3] State of California, and thereby subject to the debts of said bankrupt.

WHEREFORE, your petitioner prays that said order of said District Court be reviewed and revised in matters of law, and that said order be reversed; and for all proper relief herein.

W. T. CRAIG and  
CARROLL ALLEN,

Attorneys for Wm. H. Moore, Jr., Trustee of the Estate of Benjamin C. Crandall, Bankrupt, Petitioner. [4]

**Exhibit No. 1.**

Certified Copy.

**NOTE.**

\$1275.

May 20th, 1911.

On demand after date, I promise to pay to the order of Nellie M. Crandall Twelve Hundred Seventy-five Dollars at my office, Pasadena, Cal.

\$1050.	May 3d	} Value Received.
150.	" 4	
75.	" 14	

**BENJ. C. CRANDALL.**

No. ——— Due ———

*In the District Court of the United States, Southern  
District of California.*

IN BANKRUPTCY.

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Proof of Unsecured Debt.**

At Pasadena, in said Southern District of California, on the 3d day of June, A. D. 1912, came Nellie M. Crandall, of Pasadena, in the county of Los Angeles, and State of California, and made oath and says that Benjamin C. Crandall, the person by whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said deponent in the sum of Twenty-one Hundred Four and 25/100 (\$2104.25) Dollars; that the consideration of said debt is as follows: Balance due for wages as clerk in the store of bankrupt, in the city of Pasadena, from October 10, 1911, to January 11, 1912, continuously, exclusive of Sundays and holidays, at the agreed wages of \$20.00 per week, and it was specifically agreed between bankrupt and claimant, that the claimant was to [5] receive from bankrupt the sum of \$20 each week, for her services, for her own and separate use, of which \$10 was to be drawn each week and was so drawn, and the remaining \$10 each week was to be left in the business until conditions were easier, or until the termination of said business, and that the said balance of \$10 per week so unpaid aggregates the sum of \$130 for labor so

rendered within three months next immediately preceding the filing of bankrupt's petition in this matter.

That in addition, claimant rendered services for sixty-one weeks next immediately preceding the three month period above indicated, at the rate of \$20 per week, according to the agreement above set forth, which agreement was made at the opening of bankrupt's business; that of said amount, claimant received only the sum of \$10 each week, and the remaining sum of \$10 per week for sixty-one weeks next immediately preceding the three month period above set out is now wholly due, owing and unpaid, and it was especially agreed between claimant and bankrupt that said entire wages were to be paid to claimant as her own separate property after said wages, to wit, \$10 were paid each week, the remaining half to be paid when the business was on an easier footing, or at the conclusion of said business.

That no part of said debt has been paid, except as aforesaid, nor has any note been received for said indebtedness, not for any part thereof, nor has any judgment been rendered thereon, nor are there any setoffs or counterclaims to the same, except as above stated, and that deponent has not, nor has any person by her order, or to her knowledge or belief, for her use, had or received any manner of security for said debt or debts whatever; that in addition, claimant borrowed upon the credit of her property in the city of Pasadena [6] and secured by a mortgage thereon, the sum of \$1,500, and upon the 3d day of May, 1911, loaned the bankrupt the sum of \$1,050;

on the 4th day of May, 1911, \$150, and on the 14th day of May, \$75.00, a total of \$1,275 in cash, lawful money of the United States, and received from said bankrupt on the 20th day of May, 1911, his note for said sum, which original note is hereto attached and designated as Exhibit "A," and made a part hereof; that there are no setoffs or counterclaims to said note, nor any part thereof, nor has the same or any part thereof been paid; that the entire said sum of \$1,275, together with interest at the rate of 7 per cent per annum, from May 20, 1911, to wit, Eighty-nine and 25/100 (89.25) Dollars, is now wholly due, owing and unpaid, and that deponent has not, nor has any person by her order or to her knowledge or belief, for her use, had or received any manner of security for said debt whatever.

NELLIE M. CRANDALL.

Subscribed and sworn to before me this 3d day of June, 1912.

[Seal] JAMES WHEELER MORIN,  
Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: No. 918. United States District Court, Southern District of California (Bankruptcy). In the Matter of Benjamin C. Crandall, Bankrupt. Proof of Secured Debt by Agent by Nellie M. Crandall for \$2,104.25. Allowed ———, 19—. ———, Referee in Bankruptcy. J. W. Morin, Attorney for Claimant, Pasadena, Cal., Dodworth Bldg. Filed June 4, 1912, at 3 o'clock P. M. Lynn Helm, Referee. Allowed June 6, 1912, for \$1,325.00. Helm, Referee. [7]



**Exhibit No. 2.****[Certificate of Referee in Bankruptcy.]**

*In the District Court of the United States of the  
Southern District of California, Southern Divi-  
sion.*

IN BANKRUPTCY—No. 918.

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

To the Hon. OLIN WELLBORN, Judge of said  
Court:

I, Lynn Helm, Referee in Bankruptcy, in charge of  
these proceedings do hereby certify:

That in the course of said proceedings an order was  
made and entered on the 6th day of June, 1912, in  
words and figures as follows: [8]

*In the District Court of the United States for the  
Southern District of California, Southern Divi-  
sion.*

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Order [of Referee] Allowing Claim of Nellie M.  
Crandall.**

It appearing that Nellie M. Crandall, the wife of  
said bankrupt, has filed in said court her claim  
against said estate in the sum of \$2,104.25, consist-  
ing of \$1,364.25, constituting cash advances made to  
said bankrupt, together with interest thereon at the  
rate of 7% and \$610.00, claimed as wages earned in  
the store of said bankrupt within two years last past,

and \$130.00, as wages earned in the store of said bankrupt within three months prior to the bankruptcy proceedings herein, and said trustee having objected to the allowance of said claim for wages, either the general or preferred claim, on the ground that claimant, as the wife of the bankrupt was not entitled to recover a claim against her husband or his estate in bankruptcy for services rendered by her to her husband while they are living together as husband and wife, good cause appearing therefor,

IT IS ORDERED that the claim of Nellie M. Crandall, the wife of said bankrupt, for cash advances made, together with interest thereon, be and the same is hereby allowed in the sum of \$1,325.00, and the claim of said Nellie M. Crandall for wages earned both general and preferred claims, be, and the same is hereby disallowed.

Dated June 6th, 1912.

LYNN HELM,

Referee in Bankruptcy. [9]

That afterwards on the 15th day of June, 1912, Nellie M. Crandall, the creditor in said proceedings, feeling aggrieved thereat, filed a petition for review which was granted.

That so far as the order above is concerned, the evidence upon which it is based is, that Mrs. Crandall, the claimant, is the wife of the bankrupt Benjamin C. Crandall, and as such was living with him at all times during which it is alleged that he became indebted to her in that portion of the claim which is disallowed, and which was for wages alleged to have been earned by Mrs. Crandall while in the employ of

her husband, and as such, she was employed by her husband, at his place of business in the city of Pasadena, and was to have twenty dollars a week for services, ten dollars payable each week, and ten dollars to be left on account weekly until it was paid. It was not paid and was never reduced to her possession, and at the time of the filing of the petition in bankruptcy the unpaid ten dollars was still due and owing, which amounted in all to the sum of Six Hundred Dollars earned within two years last past, and One Hundred and Thirty Dollars earned within three months immediately prior to the bankruptcy proceedings, no part of which was paid by the bankrupt.

The question presented on this review is, can the wife in a bankruptcy proceedings have a claim allowed against the estate of the bankrupt for wages earned by her while they were living together, and while she was working for him, and which wages have not been reduced to the possession of the wife prior to the filing of the petition in bankruptcy? The husband, as the head of the marital community, is entitled to the service of his wife living with him. Her earnings or wages which [10] she would be otherwise entitled to constitute community property, and as such they belong to the husband, and cannot be recovered from him in the absence of a previous agreement that they should be hers or be released by him to her. There is no evidence in this case of any such previous agreement.

I hand up herewith for the information of the Judge the proof of claim of Nellie M. Crandall. The Reporter's transcript of the testimony taken on the



hearing of the objections to said claim. The objections of the trustee to said claim were oral.

Dated June 17, 1912.

LYNN HELM,  
Referee in Bankruptcy.

[Endorsed]: No. 918. In the United States District Court, District of California, Southern Division. In the Matter of Benjamin C. Crandall, Bankrupt. Filed Jan. 24, 1913, *nunc pro tunc* as of June 22, 1912, at 45 min. past 1 o'clock P. M. Wm. M. Van Dyke, Clerk. C. E. Scott, Deputy. Lynn Helm, 510 Los Angeles Trust Building, Los Angeles, Cal. [11]

**Exhibit No. 3.**

*In the District Court of the United States, Southern District of California.*

**IN BANKRUPTCY.**

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Petition for Review [by U. S. District Court.]**

To the Honorable LYNN HELM, Referee in Bankruptcy, for the Southern District of California:

Nellie M. Crandall of Pasadena, in the county of Los Angeles, in the said Southern District of California, respectfully represents to the Referee that on the 6th day of June, last past, said Referee made an order disallowing petitioner's claim, heretofore filed against said bankrupt's estate, in two particulars, to wit: Referee disallowed said Nellie M. Crandall's claim for unpaid wages earned by her in the

service of bankrupt within three months next immediately preceding the filing of bankrupt's petition in bankruptcy, in the sum of \$130.00; your petitioner respectfully urges that the same should be allowed as a preferred claim against the estate of said bankrupt, and secondly, said Referee did on the same day disallow another portion of the claim of said Nellie M. Crandall in the sum of \$610.00, unpaid wages due her on account of personal services rendered by her in the bankrupt's employ, within the period of sixty-one weeks next immediately preceding the period of three months above referred to; that the claims of petitioner are more fully set out in her Proof of Unsecured Debt on file before said Referee, to which reference is hereby made for further particulars. [12]

That your petitioner respectfully urges that the Referee erred in so much of his order disposing of petitioner's claim against said estate as refers to said claim of \$130.00, a preferred claim, and the sum of \$610.00, a general claim, and your petitioner citing this as an error, hereby asks for a review from Referee's order in reference to the said claim of \$130.00, preferred wages, and the sum of \$610.00, general claim, and no other part of his order.

Your petitioner respectfully asks that Referee forthwith certify to the Judge of the District Court of the United States, Southern District of California, the question presented by petitioner's petition in those two respects, to wit, whether a wife of a bankrupt shall be allowed a claim for unpaid wages due her for personal services performed in the employ-

ment of the bankrupt in his business, under an express agreement with him fixing the rate of said wages, which were unpaid at the time of said bankruptcy.

Dated this —— day of June, 1912.

NELLIE M. CRANDALL,

Petitioner.

By J. W. MORIN,

Her Attorney.

[Endorsed]: 918. In the District Court of the United States for the Southern District of California. In the Matter of Benjamin C. Crandall, Bankrupt. Petition for Review Original. Received Copy June 15th, 1912. W. T. Craig & Carroll Allen, Attys. for Trustee. Filed June 20, 1912, at 10 min. past 3 o'clock P. M. Wm. M. Van Dyke, Clerk. Virgil W. Owen, Deputy. J. W. Morin. 208 Dodworth Bldg., Pasadena, Cal., Attorney for Petitioner. Filed June 15, 1912, at 11 o'clock A. M. Lynn Helm, Referee. [13]

**Exhibit No. 4.**

**[Order Affirming Report of Referee and Allowing  
Claim of Nellie M. Crandall.]**

At a stated term, to wit, the January Term, A. D. 1913, of the District Court of the United States of America, for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Tuesday, the fourteenth day of January, in the year of our

Lord One Thousand Nine Hundred and Thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 918—BKCY. S. D.

In re BENJAMIN C. CRANDALL,

Bankrupt.

This matter having heretofore been submitted to the Court on a review of the order of the Referee in bankruptcy disallowing the claim of Nellie M. Crandall, wife of the bankrupt, against the bankrupt's estate; the Court, having duly considered the same, and being fully advised in the premises, now reads and files its conclusions, and it is ordered that the report of the Referee herein be, and the same hereby is, disaffirmed, and that the claim of said Nellie M. Crandall be, and the same hereby is, allowed. [14]

**[Certificate of Clerk U. S. District Court to Copy of  
Claim of Nellie M. Crandall, etc.]**

I, Wm. M. Van Dyke, Clerk of the District Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a true, full and correct copy of the original Claim of Nellie M. Crandall, Referee's Certificate upon Petition for Review, Petition of Nellie M. Crandall for Review of Order of Referee, Minute Order of United States District Court reversing Referee's decision; all filed of record in my office in the matter of Benjamin C. Crandall, in Bankruptcy No. 918, Southern Division.

Attest my hand and seal of said District Court  
this 25th day of January, A. D. 1913.

[Seal]

WM. M. VAN DYKE,  
Clerk.

By E. H. Owen,  
Deputy Clerk. [15]

United States of America,  
Southern District of California,  
Southern Division,  
County of Los Angeles,—ss.

Wm. H. Moore, Jr., being duly sworn, says: That  
he is the duly elected, qualified and acting Trustee  
of the Estate of Benjamin C. Crandall, Bankrupt,  
and the petitioner in the within entitled matter;  
that he knows the contents of the foregoing Peti-  
tion for Review, and the same is true as he believes.

WM. H. MOORE, Jr.

Subscribed and sworn to before me this 25th day  
of January, 1913.

[Seal]

M. LUCILE ADAMS,  
Notary Public in and for the County of Los Ange-  
les, State of California. [16]

[Endorsed]: No. ——. The United States Cir-  
cuit Court of Appeals in and for the Ninth Circuit.  
In the Matter of Benjamin C. Crandall, Bankrupt.  
Petition for Revision Under Section 24(b) of the  
Bankruptcy Act of 1898. Received copy of the  
within Petition for Revision this 25th day of  
January, 1913. J. W. Morin, Attorney for Nellie  
M. Crandall, Claimant. [17]

*In the United States Circuit Court of Appeals in and  
for the Ninth Circuit.*

IN BANKRUPTCY.

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Stipulation as to Record and Facts.**

IT IS HEREBY STIPULATED by and between Wm. H. Moore, Jr., Trustee of the estate of Benjamin C. Crandall, a bankrupt, the petitioner, and Nellie M. Crandall, a claimant, that the record of proceedings attached to the Petition for Revision in the above-entitled matter is a full, true and correct copy of the proceedings in the District Court of the United States, in and for the Southern District of California, Southern Division, concerning the claim of Nellie M. Crandall; that the summary of evidence contained in the Certificate of Lynn Helm, Esq., Referee, attached to said Petition for Revision and marked Exhibit No. 3, constitutes a full and correct statement of the facts relating to said claim; that the said matter may be heard, considered and determined by the United States Circuit Court of Appeals on said record.

Dated: January 24th, 1913.

W. T. CRAIG and  
CARROLL ALLEN,  
Attorneys for Petitioner.

J. W. MORIN,  
Attorney for Claimant. [18]



[Endorsed]: No. ——. In the United States Circuit Court of Appeals in and for the Ninth Circuit. In the Matter of Benjamin C. Crandall, Bankrupt. Stipulation as to Record and Facts. [19]

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*In the District Court of the United States for the Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 918.

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Order [of U. S. District Court] Allowing Petition  
for Revision and That Clerk Prepare Record.**

WHEREAS, Wm. H. Moore, Jr., Trustee of the Estate of Benjamin C. Crandall, a bankrupt, feels aggrieved by order entered herein on the 14th day of January, 1912, and the Court being satisfied that the questions therein determined are questions of which revision may be asked, as provided in section 24(b) of the Bankrupt Act of 1898, and that the application should be granted, on motion of W. T. Craig and Carroll Allen, attorneys for said trustee,

IT IS ORDERED that the order of this Court made and entered herein on the 14th day of January, 1912, reversing the order of Lynn Helm, Esquire, Referee, which disallows that portion of the claim of Nellie M. Crandall which is founded upon a balance due for services rendered to the bankrupt, be revised in matters of law by the United States Circuit Court of Appeals in and for the Ninth Cir-

cuit, as provided by section 24(b) of the Bankrupt Act of 1898, and the rules and practice of that court; that the clerk of this court prepare, at the expense of the petitioner, a certified copy of such order and a record of this case pertinent to said order.

Dated January 25th, 1913.

OLIN WELLBORN,

United States District Judge.

WITNESS the Honorable OLIN WELLBORN, Judge of said Court, and the seal thereof, at Los Angeles, in said District, this 25th day of January, 1913.

[Seal]

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,

Deputy Clerk.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original Order Allowing Petition for Revision and That Clerk Prepare Record, filed January 25th, 1913, in the matter of Benjamin C. Crandall, Bankrupt, No. 918, Southern Division, as the same remains on file and of record in my office.

Attest my hand and seal of said District Court this 25th day of January, A. D. 1913.

[Seal]

WM. M. VAN DYKE,

Clerk.

By E. H. Owen,

Deputy Clerk.



[Endorsed]: No. 918. In United States District Court, Southern District of California, Southern Division. In the Matter of Benjamin C. Crandall, Bankrupt. Certified Copy of Order Allowing Petition for Revision and That Clerk Prepare Record. Filed Jan. 25, 1913, at 25 min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. C. E. Scott, Deputy.  
[20]

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*In the United States Circuit Court of Appeals in and for the Ninth Circuit.*

IN BANKRUPTCY.

In the Matter of BENJAMIN C. CRANDALL,  
Bankrupt.

**Notice of Filing Petition for Revision.**

To Nellie M. Crandall, Claimant, and to J. W. Morin,  
Her Attorney:

You are hereby notified that on the 29th day of January, 1913, we will file in the clerk's office of the United States Circuit Court of Appeals, in and for the Ninth Circuit, in the city of San Francisco, California, a Petition for Revision of the Order of the United States District Court, Southern District of California, Southern Division, made and entered on the 14th day of January, 1913, reversing the order of the Referee in the matter of the claim of Nellie M. Crandall, a copy of which said Petition for Revision is served herewith. We will then ask to have said cause docketed and the necessary order made

thereon to have such cause set down for hearing.

Respectfully yours,

W. T. CRAIG and

CARROLL ALLEN,

Attorneys for Petitioner. [21]

[Endorsed]: No. ——. In the United States Circuit Court of Appeals in and for the Ninth Circuit. In the Matter of Benjamin C. Crandall, Bankrupt. Notice of Filing Petition for Revision. I hereby accept service of the above notice this 25th day of January, 1913. J. W. Morin, Attorney for Nellie M. Crandall, Claimant. [22]

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[Endorsed]: No. 2245. United States Circuit Court of Appeals for the Ninth Circuit. Wm. H. Moore, Jr., as Trustee in Bankruptcy of the Estate of Benjamin C. Crandall, Bankrupt, Petitioner, vs. Nellie M. Crandall, Claimant, Respondent. In the Matter of Benjamin C. Crandall, Bankrupt. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Southern District of California, Southern Division.

Filed January 29, 1913.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

No. 2245.

United States

# Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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In re  
BENJAMIN C. CRANDALL,  
A Bankrupt.

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Wm. H. Moore, Jr., Trustee,  
*Petitioner,*

*vs.*

Nellie M. Crandall,  
*Respondent.*

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## BRIEF FOR PETITIONER.

### STATEMENT OF THE CASE.

This case comes before this court upon the petition for a revision of a certain order of the United States District Court for the Southern Division of the Southern District of California disaffirming an order of the referee in bankruptcy disallowing a claim for \$740.00 presented by Nellie M. Crandall against the estate of her husband for wages performed by her for her husband as a clerk in his store in the city of Pasadena. Of this amount \$130.00 is claimed as preferred and the balance as a general claim against the estate.

The claim admits that the wife had been paid \$610.00 as wages and the claim is presented as a balance due.

The matter comes before this court on petition for revision, but if it should be required that it be presented by appeal then the attention of the court is called to the fact that the petition was filed within the time allowed for appeal, that the record contains all the matters which a record on appeal would contain, and the stipulation of the respective counsel [Trans. p. 16] recites "that the said matter may be *heard*, *considered* and *determined* by the United States Circuit Court of Appeals on said record." For the purpose of the hearing the matter may, therefore, be considered by this court as an appeal.

Nellie M. Crandall, the claimant, is the wife of the bankrupt, and as such was living with him at all the times it is alleged that he became indebted to her for wages. She was employed by her husband at his place of business and was to have \$20.00 per week for her services, \$10.00 payable each week and \$10.00 to be left on account weekly until it was paid. It was not paid and was never reduced to her possession, and at the time of the filing of the petition in bankruptcy the unpaid \$10.00 per week was still due and owing. There was no agreement that these wages should be hers or be released by him to her. [Tr. p. 10.] The claim was disallowed by the referee, Honorable Lynn Helm, and was ordered allowed by United States District Judge, Honorable Olin Wellborn. One hundred and thirty dollars was allowed as a prior claim and six hundred and ten dollars was allowed as a general claim against the estate.

The question involved in this case is whether a contract made by a husband with his wife to pay her wages for working in his place of business, while she is not living separate and apart from him and there being no contract between them that these wages shall be her separate property, creates an indebtedness from him to her upon which she can file a claim against him in bankruptcy as a creditor of her husband.

**The Errors Relied Upon for the Reversal of the Order of the District Court are as Follows:**

FIRST: In holding that the claimant, as the wife of said bankrupt, was entitled to prove a claim for services rendered to said bankrupt in his business while they are living together as husband and wife.

SECOND: In holding that the contract for services upon which said claim is based was not illegal.

THIRD: In holding that the contract for services upon which said claim is based was not void.

FOURTH: In holding that the contract for services upon which said claim is based is not prohibited by the public policy of the State of California.

FIFTH: In holding that said bankrupt, as the husband of said claimant, was not entitled to the services of claimant without compensation therefor.

SIXTH: In holding that the earnings of said claimant for services rendered to bankrupt did not constitute community property as defined by the statutes of the State of California, and thereby subject to the debts of said bankrupt.

**In California the Earnings of a Wife, Living with her Husband, are Community Property, in the Absence of an Express Contract Between Her and Her Husband That They Shall be Her Separate Property.**

“The services of the wife are a part of the earning power of the community, and the earnings received for her services constitute community property as much as earnings received for the service of the husband; and for any wrongful act of either by which either husband or wife is deprived of the capacity to accumulate community property, the husband as the head of the community may maintain an action for damages.”

Martin v. Southern Pacific Co., 130 Cal. 285;

Beakins v. Dieterle, 5 Cal. App. 690.

“All property of the wife owned by her before marriage, and that acquired afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, is her separate property.”

Civil Code, Sec. 162.

“All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, is his separate property.”

Civil Code, Sec. 163.

“All other property acquired after marriage by either husband or wife or both, is community property,” etc.”

Civil Code, Sec. 164.



From the foregoing provisions of the Code and citations of authorities it will be conceded, we believe, that the earnings of the husband and wife constitute community property without a question.

It has, however, been held that these earnings may be converted into separate property by agreement between the husband and wife.

Wren v. Wren, 100 Cal. 276;

Larson v. Larson, 15 Cal. App. 531.

Special attention is directed to the fact that in the case at bar no contract existed between husband and wife that the wages to be earned by her from her husband should be her separate property.

No citation of authority is necessary to the effect that all community property is liable for the payment of the community debts.

**An Agreement of the Husband to Pay His Own Wife Wages Does Not Convert the Wages into Separate Property, and in California Such Wages Are Liable for the Payment of His Debts.**

The entire case of this claimant rests upon a section of the Civil Code of California as follows:

“The earnings of the wife are not liable for the “debts of the husband.”

Civil Code, Sec. 168.

It must be remembered that the wages claimed by the wife were never reduced to her possession, but her claim is a mere chose in action. The allowance of the claim partly as preferred and partly as a general claim is wholly illogical. If the amount due from the hus-

band to the wife constitutes earnings as meant by section 168 of the code, and if these earnings are not subject to the debts of the husband, then the only logical thing for the court to have done was to have allowed the withdrawal from the husband's estate of the entire amount due the wife. Not, however, as a claim against the estate, but as an exemption. The referee held properly, we think, that section 168 did not create a debt, but was a statute of exemption. He held that if the wife had reduced the money to her possession and the husband had permitted her to retain it as her own it would then constitute her separate property and would be exempt from the claims of his creditors, but inasmuch as this debt due from the husband to the wife was nothing but community property, she could not maintain any action against her husband; that it would be impossible for her to enforce a claim in bankruptcy when she could not enforce such a claim in any civil action; if, therefore, she had any right to wages under section 168 it could only be because that section created in her favor a statute of exemption. The claim presented in this matter is upon a debt and is not a claim based upon an exemption.

It will be conceded that section 168 was never intended to mean that the earnings of the wife were her separate property. This is shown by the fact that the code in the following section provides when earnings of the wife should be her separate property. This section is as follows:

“The earnings and accumulations of the wife, and of  
“her minor children living with her or in her custody,



“while she is living separate from her husband, are  
“the separate property of the wife.”

Civil Code, Sec. 169.

The attention of the court is called to the fact that Mrs. Crandall was not living separate from her husband.

“The earnings of a wife do not become her separate  
“property while she is living with her husband. They  
“can only become such when she lives separate from  
“him.”

Abbott v. Wetherby, 6 Wash. 507.

The case just cited construes sections 1402-1403 of the General Statutes of Washington, which are similar to sections 168 and 169 of the California Code, and the court in that case says that section 1402, providing that the earnings of the wife were not liable for the husband's debts, was “a statute of exemption and not  
“of property rights.”

It is not necessary for us to go to the length of claiming that all earnings of a wife, whether performed for her husband or a third party, shall be subject to the community debts. However, in a very able note to a case in the West Coast Reporter Professor John Norton Pomeroy gave the following construction to section 168 of the Civil Code:

“The first question which arises is: what debts of  
“the husband are here intended, for which her earnings are not liable? All of the debts which the husband incurs in the support and maintenance of his family, and all those which he incurs in carrying on  
“any trade, business, profession, or office by which

“community property is acquired, and all those which  
“he incurs in the management, increase or obtaining  
“of community property, are debts of the husband, in  
“the sense that he is alone the contracting party, he is  
“alone personally liable, and he alone can be sued by  
“the creditors. The common law still prevails in this  
“state that, so far as personal liability goes, such debts  
“are the debts of the husband. But since all these  
“debts are incurred for the benefit of the community  
“and of the community property, they are community  
“debts and all community property is liable for them  
“on the husband’s death, before the widow’s share of  
“that property is ascertained from the residue after  
“their payment. But there may be other debts of the  
“husband which are his own separate and individual  
“liabilities, and not community debts. For example,  
“if he has a separate property, all the debts which he  
“incurs in managing or protecting such property would  
“be his separate debts and not community debts. The  
“theory upon which the whole system of community  
“property is based, is, that it is the product of the joint  
“labor of both the spouses. Even where the wife con-  
“tributes nothing, and the whole community property  
“is the result of the husband’s business or employment,  
“yet the wife’s interest is founded upon the theory that  
“it was all produced by their joint labors. Upon this  
“theory, it is eminently just and equitable that both  
“the spouses should in some way be liable for the com-  
“munity debts. As no personal liability attaches to  
“the wife, this result can only be reached by making  
“all community property liable for the community debts.  
“In other words, it is just and equitable that all the  
“community property, even though some portion of it  
“consists of earnings of the wife, should be liable for  
“all community debts, notwithstanding those debts are  
“in a strict legal sense ‘debts of the husband.’ \* \* \*  
“If the interpretation should prevail that ‘the debts of  
“the husband’ include all the community debts which  
“he incurs and for which he alone is personally liable,  
“as well as his own individual and separate debts; and  
“that the wife’s earnings, even while living with the  
“husband, continue to be free from liability for all such

“debts after they have been paid over to her and have  
“become part of the community property, then such a  
“case as the following would not be impossible nor even  
“improbable.

“A husband and wife are living together, neither of  
“them having any separate property. The wife by her  
“superior energy, industry, skill and knowledge earns,  
“either by her mental or physical labor, all the income  
“for themselves and family. The husband, while free  
“from habits of dissipation, is so deficient in activity  
“and purpose that he really contributes nothing for the  
“support of himself, wife and family. The earnings  
“of the wife are more than enough for the maintenance  
“of the household, and the surplus lies accumulated,  
“and whatever may be its form, whether money, or  
“land, or chattels, or things in action, it is community  
“property. This husband, however inefficient he may  
“be as a business man and a producer, is still the legal  
“head of the family; he is legally bound to support it;  
“the debts incurred for the support and maintenance  
“of himself, wife and family are *his* debts, for which  
“he is alone liable; all the contracts which the wife  
“may make for supplies of every description furnished  
“for themselves and family are his contracts made by  
“her as his agent. In short, all such debts incurred  
“for the benefit of the spouses and their family are ‘the  
“debts of the husband,’ for which he alone can be sued.  
“They are also community debts. Moreover, by the  
“express terms of the code, he alone has the legal pos-  
“session, control, management and power of disposition  
“of this community property. The interpretation above  
“described would necessarily lead to the result that in  
“such a case as this all the community property would  
“be completely beyond the reach of the creditors, al-  
“though their demands were community debts. The  
“creditors might recover personal money judgments  
“against the husband on their claims, but could not  
“satisfy these judgments out of community property.  
“As neither spouse has any separate estate, the cred-  
“itors in such a case would be without any legal rem-  
“edy. \* \* \* In order to preserve any consistency  
“and congruity with the general theory of community

“property, section 168 should be construed as applying “alone to the separate individual debts of the husband “and not to his community debts; but if it does include “his community debts, then the ‘earnings of the wife’ “should not extend to sums which have been actually “paid to the wife, and thus incorporated into the mass “of community property.”

4 West Coast Reporter, 306-309. Editorial by John Norton Pomeroy.

It seems to us that section 168 of the Civil Code was passed so as to exempt the earnings of the wife from the debts incurred by the husband other than community debts.

Her earnings, being community property, would be subject to the separate debts of the husband in the absence of some statute like section 168.

“The community property is liable for debts incurred “by the husband in the management of his separate “estate.”

Spreckels v. Spreckels, 116 Cal. 339, 343.

**Contracts Between Husband and Wife by Which She Is to be Paid Wages for Working for Him Are to be Strictly Construed, and Are Held Contrary to Public Policy and Void.**

The old common law rule that all property acquired by the wife after marriage became that of the husband has been almost universally abrogated in the United States. The right of a wife to make contracts with respect to property has been fully established by statutes in the various states. The following is the law upon that subject in California:

“Either husband or wife may enter into any engagement or transaction with the other or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rule which control the actions of persons occupying confidential relations with each other, as defined by the title on Trusts.”

Civil Code, Sec. 158.

Inasmuch as we shall cite some decisions based upon the statute of New York as amended in 1896, we here quote it for purpose of comparison with the provision of the California code. It is as follows:

“A married woman has all the rights in respect to property, real and personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; but a husband and wife cannot contract to alter or dissolve the marriage and to relieve the husband from his liability to support his wife.”

Laws N. Y. 1896, C. 272, Sec. 21.

A careful comparison of the two statutes will indicate that the New York statute is fully as broad as that of California.

The courts of New York have repeatedly held that a contract made by a husband to pay his wife for ser-



vices rendered in his business is not enforceable because without consideration, since such services as she may render him belong to him.

Blaechinska v. Howard Mission, 130 N. Y. 497;  
Whittaker v. Whittaker, 52 N. Y. 368;  
Porter v. Dunn, 131 N. Y. 314;  
Matter of Callister, 153 N. Y. 294.

It has been held in many other states that the fruits of the wife's labor belong to the husband and also that she cannot enforce a claim against her husband for labor performed for him.

National Bank v. Sprague, 20 N. J. Equity 13;  
Clinton Station Mfg. Co. v. Hummell, 25 N. J. Equity 45;  
Shaeffer v. Sheppard, 54 Alabama 244;  
Hazelbaker v. Goodfellow, 64 Ill. 238;  
Lee v. Savannah Guano Co., 99 Ga. 572;  
Miller v. Miller, 78 Iowa 177.

"While the cases may not be entirely harmonious on "the question of the husband's right under these modern statutes to the earnings of his wife for labor performed by her for third persons, the authorities are "uniform that such statutes do not operate to give the "wife a legal claim upon her husband or his estate for "wages for performing her domestic duties as a wife, "or for aiding and assisting him by her labor in any "business pursuit he may be engaged in, and any "promise of the husband to pay his wife for such services is without consideration and void as against the "claims of his creditors."

Brittan v. Crowther, 54 Fed. 295 (C. C. A., per Caldwell, J.).

Profits and labor of the husband and wife belong to the community, and, therefore, the wife's earnings as well as those of the husband must be regarded as community property.

Pearce v. Jackson, 61 Tex. 642;

Ford v. Brooks, 35 La. Ann. 157.

Efforts have been made in various states to prove these claims against the estates of husbands in bankruptcy, but with the exception of a single case hereafter considered, the courts have held these claims not provable in bankruptcy.

"In Vermont a wife has no legal or equitable claim "upon her husband for her personal services, and "where in that state a joining in a deed of the family "homestead in which no money of her own was invested, upon her husband's agreement to pay her regular wages for working in his fruit store and restaurant and in doing the housework, she is not entitled to prove her claim therefor against his estate "in bankruptcy."

*In re Trombly*, 16 Am. B. R. 599.

"In Arkansas a claim under a contract to pay for a "wife's services as clerk in her husband's store is not "provable against his estate in bankruptcy."

*In re Suckle*, 176 Fed. 828.

In a recent case in New York a wife was employed by the husband in his business, for which he promised to pay her a definite reasonable sum per week and she in turn employed a servant to fulfill the domestic duties

which otherwise the wife should have done or aided in doing. The wife presented a claim against the bankruptcy estate of her husband for wages under this contract and the United States district judge disallowed the claim and in the course of the opinion said, in construing the statute of New York which has been hereinabove quoted:

“The statute obviously intends to enable the wife to contract with the husband respecting the acquisition of property, but does it enable the wife to acquire property by agreeing to render him a service outside of her domestic duties? If so, it would enable her to acquire property by contracting with him respecting her domestic service. There is a wide distinction between a power to acquire property by a contract with the husband and a power to create property which shall be her own, by an agreement that she shall be paid for services that the law intends that she shall render gratuitously, if at all. In other words, a contract with the husband for the acquisition of property does not include a contract to convert her personal service to her husband into property.”

*In re Kaufmann*, 104 Fed. 768.

It is true that there are some cases that apparently hold to the contrary of the foregoing decisions of the bankruptcy courts, but so far as we have been able to ascertain there is only one decision allowing a claim for the wife's wages against the estate of the bankrupt husband. This case was much relied upon in the court below by the claimant. It is the case *In re Domenig*, 128 Fed. 147. The court here allowed the wife to



prove a claim for services performed in her husband's business. The facts of that case, however, are quite different from the case at bar. An examination of the case will show that the wife was living separate from her husband and he agreed to pay her wages of \$8.00 per week for working in the business, provided she would return to him, and "that it was upon the "strength of the promise to pay her \$8.00 per week that "she returned to him," and "that the sum of \$8.00 was "to be hers, and that her husband allowed her the "money needed in conducting the house in addition to "the sum of \$8.00." Even in this case the court recognized the danger of these claims, and said:

"Undoubtedly contracts of this kind between husband and wife ought to be scrutinized with the utmost vigilance and should never be allowed unless the evidence is clear and convincing in every particular. "Ordinarily there is little evidence to support them, "except the testimony of the husband and the wife "themselves, and the husband is usually interested "nearly as much as the wife in favor of her claim."

The court might have added, also, that the theory that these wages belonged to the wife and did not belong to the husband, in the sense that he has not the beneficial use of them, may be a theoretical truth, but is a practical fallacy. The courts cannot shut their eyes to everyday experience. The practical effect of allowing these claims of wives for services performed for husbands is simply to take so much property away from the husband's creditors and give it back to the bankrupt.

The importance of the ruling in the case at bar arises not from the results to the creditors in the Crandall case, but it arises from the precedent which it establishes of allowing these wage claims to wives who frequently assist their husbands in their businesses and who just as frequently come into the bankruptcy courts with claims for wages in consequence of contracts made between husbands and wives in the privacy of their own apartments. Creditors are absolutely at their mercy, for there is no possible way of contradicting the testimony establishing the contract, and it may be stated to this court that there are many of these claims pending in the courts and that the question involved in this case is presented to this court for its decision in consequence of the frequent recurrence of the condition of affairs presented in the Crandall case.

Another case much relied upon by the claimant was *Roache v. Union Trust Co.*, 52 N. E. 612 (Indiana). An examination of this case will show that the services were performed for the husband under a contract that the money should be the property of the wife and that it was actually paid to her and became her separate property and was afterwards loaned to the husband. This would clearly constitute a gift to the wife and make the property her separate property under the laws of California, in the absence of any fraud on the creditors.

We believe that an analysis of many of the cases holding that the wife may present claims for wages will show special circumstances which take them out of the general rule.

In California the husband has absolute control and right of possession of the community property. Beyond all question the debt, if there is any debt, that might be due from Mr. Crandall to his wife constitutes community property. Mr. Crandall is entitled to the possession of that property. To allow a claim to a wife for this community property would simply mean that under the law of California the claim would be allowed to Mrs. Crandall, and Mr. Crandall, the bankrupt, would be entitled to the possession and use of the money. As before stated section 168 is a statute of exemptions and cannot be construed as creating a debt between husband and wife upon which any claim in bankruptcy could be predicated. And if it should be held that wages due the wife from the husband can be taken out of the bankrupt's estate, then it constitutes nothing more nor less than the right of the bankrupt to take out from his estate the amount of wages claimed to be due the wife. There can be no other logical conclusion reached, for it must be conceded that the wife cannot sue the husband for the possession or control of community property in California. It is certainly anomalous to allow a claim to be presented against a bankrupt estate, which in effect is an action to recover property, when no suit at law or in equity could be maintained in any court for the recovery of such property.

It is submitted that if section 168 of the Civil Code applies to the earnings of a wife for labor performed for her husband, that then it should only apply to those earnings that have been reduced to her possession;

that it was never intended that her right to earnings should be enforceable against property claimed by creditors; that the chose in action, if there can be such a thing where the right is not enforceable, is not what is meant by that section; that even if it were possible that a debt could thus arise from the husband to the wife, then this debt does not constitute "earnings." To hold that it does will create in California an entirely new doctrine of law. For if it be true that it does constitute earnings that are exempt, then hereafter in every attachment or execution levied against property of the husband the wife may claim her wages, the same as any other employee, in preference to execution or attaching plaintiff.

It is earnestly submitted that for all of the reasons given in the foregoing brief the claim of Mrs. Crandall should have been rejected and that the United States District Court should be reversed and the order of the referee affirmed in this matter.

W. T. CRAIG &  
CARROLL ALLEN,  
*Attorneys for Petitioner.*

No. 2245

United States  
Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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In re  
BENJAMIN C. CRANDALL,  
A Bankrupt.

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Wm. H. Moore, Jr., Trustee,  
*Petitioner,*

*vs.*

Nellie M. Crandall,  
*Respondent.*

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BRIEF FOR RESPONDENT.

It will be observed that in the case at bar, to-wit: the Crandall case, the wife, Nellie M. Crandall, had previously loaned out of her separate property a considerable sum of money to bankrupt [Tr. p. 8], the inference being that the same had gone to establish the business now in bankruptcy. It will be observed that the duties that Mrs. Crandall was performing in the store were in addition to the normal duties devolving upon a wife merely by virtue of the marriage status. That is, there is no contention that Mrs. Crandall neglected her household duties or that the bankrupt paid

for that work to be done and that she was simply substituting one service for another. Mrs. Crandall was simply rendering a service which a clerk must have, in any event, been paid to render, and doubtless in a more conscientious and patient manner than a hired stranger would have rendered it. There is no allegation of bad faith or unfairness in the contract between Mrs. Crandall and the bankrupt. The question is merely whether there was any difference in money earned by Mrs. Crandall under an express contract from money earned by a stranger under an express contract. If there is any force or meaning in the agreement that bankrupt should pay Mrs. Crandall \$20.00 a week for her services, it must mean that the money was to be hers. What nonsense it would be to say that Mrs. Crandall was hired at \$20.00 a week as clerk but that Crandall did not mean that she was to receive her wages. The husband is entitled to the service of the wife in normal marriage status, but the sphere of such service is thoroughly well understood. It is within the home as contrasted with the business. As far as I know, there has never been a case which decided or intimated that the husband could command the wife to render service in the business community as of right. I doubt not but that he could forbid her from so engaging herself, especially if to the neglect of her recognized duties at home, but when she does engage in such outside work, and especially upon express request of her husband, she is thereupon rendering an additional service which is a consideration at law and is a matter respecting *property* for which the promise of the husband to pay is binding.



Marlow v. Barlew, 53 Cal. 456, says that 158 C. C. has practically abrogated all the restrictions of married women to contract, and in Wren v. Wren, 100 Cal. 276, the wife may sue alone for services rendered in nursing a boarder even when she is living with her husband. Her right so to recover, is based upon the conclusion of the court that the earnings so secured are her separate property because of the fact of a general understanding between husband and wife that these earnings should be hers, and such an understanding, even as to future earnings, is valid and is an agreement respecting property. The case effectually disposes of any contention that the earnings must be reduced to enjoyment or possession by the wife in order to secure her right thereto.

In Koltschmidt v. Weber, 145 Cal. 598, the rule is the same, going to the extent that a mere understanding shown by a course of conduct between the husband and wife that her earnings shall be hers, makes them such. In Perkins v. Sunset Tel. & Tel. Co., 155 Cal. 712, the rule is adopted that the earnings of the wife, including future earnings, may become her separate property by agreement between herself and husband; that circumstantial evidence of the consent is sufficient without proof of express agreement.

In reply to the trustee petitioner in this matter, respondent contends that such cases as Martin v. Southern Pacific Ry., 130 Cal. 285, and Bekins v. Dieterle, 5 Cal. 690, are inapplicable. The former involving as it does merely the question of personal injuries to the wife belonging to the husband in the absence of any

agreement or understanding existing before the injury that her earnings should be her own, and the latter case cannot fairly be cited by petitioner, because that was a plain case of Bekins and wife working up a storage business together without any agreement or understanding as to its products being her separate property, followed by a plain conveyance thereof in fraud of creditors. There are no such circumstances in the Crandall case.

In addition to sections 162, 163 and 164, respondent also wishes to call the attention of the court to sections 158, 159, 168 and 169 of the Civil Code and also to section 370 of the Code of Civil Procedure, of the state of California.

Section 158 of the Civil Code—husband and wife may make contracts: “Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.”

Section 159 of the Civil Code: “A husband and wife cannot, by any contract with each other, alter their legal relations, except (1) as to property and except that (2) they may agree, in writing, to an immediate separation, and may (3) make provision for the support of (a) either of them and of (b) their children during separation.”

Section 168 of the Civil Code: "The earnings of the wife are not liable for the debts of the husband."

Section 169 of the Civil Code: "The earnings and accumulations of the wife and of the minor children living with her or in her custody while she is living separate and apart from her husband, are the separate property of the wife."

Section 370 of the Code of Civil Procedure: "When a married woman is a party, her husband must be joined with her, except:

"1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

"2. When the action is between herself and her husband she may sue or be sued alone.

"3. When she is living separate and apart from her husband by reason of his desertion of her, or by agreement, in writing entered into between them, she may sue or be sued alone."

First of all to dispose of the authorities cited by the petitioner, the respondent calls attention to the fact that *Abbott v. Wetherby*, 6 Wash. 507, does not apply to the *Crandall* case, for in the *Washington* case the wife testifies: "He gave me money for the house and whatever was over was mine." That was the source of her resources and there was no contract for wages or remuneration of any sort between husband and wife. She did nothing outside the normal sphere of a wife. She simply saved from her household allowance.

Sections 1402 and 1403 of the General Statutes of Washington are not similar to any statute in force in

California in this, that they must be construed with section 1400 which says that the wife must be joined in deeds community property and section 1401 which provides that the husband and wife can only alter the status of community property by written and acknowledged agreements *to take effect on death*. Section 1411, nevertheless, provided that one may sue the other.

Sections 168 and 169 of the Civil Code of California can only be reconciled by the proposition that *in the absence of an agreement to the contrary, express or implied*, the earnings of the wife are community property and even under section 168 are within the husband's control, except where she is living separate from him, in which event they are her separate property and, of course, are beyond his control as well as that of the creditors of the husband; whereas section 168 does not state but that the earnings of the wife are nevertheless community property.

Whittaker v. Whittaker, 52 N. Y. 368, cited by petitioner, is inapplicable because it was a \$4000.00 note given by husband since deceased, to wife without consideration except love and affection, household work and assistance in farm chores.

Blaechinska v. Howard Mission, 130 N. Y. 497, was submitted on December 22d, 1891, and decided January 20th, 1892. The case, therefore, was based upon the Law of 1862 which provides merely that the earnings of the wife should be her own when "arising from her trade, business, labor or services carried on and per-

formed upon her sole and separate account.” The decision was expressly placed upon the ground that the statute was not broad enough to alter the common law rule that a wife cannot collect wages from the husband. It will be observed that there is no such restriction upon the rights of married women in the California statutes. The point we wish to emphasize on behalf of respondent is that the Act of 1896, quoted by petitioner on page 13 of his brief, *was not the statutory law existing in New York at the time that the case of Blacchinska v. Howard Mission was decided.* Said case, therefore, fails to be of guidance in this jurisdiction. The statutes of New York, beginning with 1892, page 592, alter the Law of 1862 by making valid contracts of the wife in regard to property “with any person including her husband,” and making the wife capable of “carrying on any business, trade or occupation.”

*Suan v. Caffé*, 122 N. Y. 308, held that a married woman may form a partnership with her husband to carry on a business, and *Kingman v. Frank*, 33 Hun. 471 (N. Y.), expressly decided that where a wife was running a dry goods and notion business employing her husband at \$8.00 per week and had not paid him, the creditors of the husband could compel her to pay said sum to their benefit in proceedings supplemental to execution. Respondent contends that these citations and this explanation plainly show that the public policy of the state of New York is in accordance with our contention in the *Crandall* case, for if the wife can hire the husband, what reason can be given why the husband cannot hire the wife? The objection that the

marital status is a general claim upon all capacity for service could not be logically applied in either situation.

New Jersey's decisions are so archaic, resting as they do upon the common law point of view, that they are without force on the Pacific Coast in consideration of the property rights arising out of domestic relations. New Jersey law in *Clinton Station Mfg. Co. v. Hummell*, 25 N. J. Equity 45, goes so far as to say that even when the wife gets the money from her services she cannot keep it against the husband's creditors. The petitioner trustee in the *Crandall* case concedes that where a wife has received her wages she can keep them. Hence he does not seriously believe that New Jersey law is law here, for in that case, the decisions in California would render his position untenable. See *Von Glahn v. Brennan*, 81 Cal. 261; also *Larson v. Larson*, 15 Cal. App. 531.

*Shaeffer v. Sheppard*, 54 Alabama 244, is inapplicable because the common law rule is expressly applied as to choses in action and personalty before statute in Alabama changing it had been passed; and in that case the wife merely ran her husband's boarding house, while he paid the bills.

*Hazebaker v. Goodfellow*, 64 Ill. 238, decides expressly that corn raised by a deserted wife cannot be taken by a husband's creditors.

*Lee v. Savannah Guano Co.*, 99 Ga. 572, merely decides that an agreement by husband to pay \$100.00 per year to wife to do the house work, fulfilled by a deed executed later when he is in debt, is void, but the court



intimated that when the *labor is outside her sphere*, the rule is far otherwise.

Miller v. Miller, 78 Iowa 177, has no force, for in that case after a family squabble the parties agreed to stop scolding and fault finding, each do their work, the wife to get \$200.00 per year. It was rightly decided on the grounds of public policy, that this financial arrangement could not be enforced. In Arkansas, *In re Suckle*, 176 Fed. 828, we have a jurisdiction where the law directs that a husband and wife cannot be business partners, nor can she hold a promissory note for her estate, nor convey lands by power of attorney, nor make executory contracts to convey, nor is the ante-nuptial deed rule abolished. This is public policy in Arkansas. Can a case from Arkansas be applicable to California?

Petitioner has called attention to far off Vermont and cited *In re Trombley*, 16 Am. Bank. Rep. 599. Let us see what the statutes were in Vermont covering this decision. See Vermont Statutes 1894, Sec. 2644 (Public Statutes in Vermont 147, Sec. 3037). "A married woman may make a contract with any person *other than her husband*, and bind herself and her separate property," etc.

Vermont Stats. 1894 2647 (Pub. Statutes of Vermont, Chap. 147, Sec. 3040): "All personal property and rights of action acquired by a woman before coverture or after coverture, *excepting from her husband*, shall be held to her sole and separate use \* \* \* but nothing herein contained shall authorize a claim by either husband or wife against the other for personal

services." Can the law of Vermont be referred to as any kin to the law of California?

In *Larson v. Larson*, 15 Cal. App. 531, a California Court held that where a wife operated as a lodging house brokerage with her husband's consent the earnings were her separate property; and that furniture bought with said earnings remained her separate property though placed in the home and that she *could maintain an action against the estate of her husband after death* to have the furniture so declared her separate property. That circumstantial evidence of the husband's consent as to the disposition of her earnings was sufficient.

#### ADJUDICATIONS UPON THE POINT IN ISSUE.

The only case against the respondent is in the New York jurisdiction where *In re Kaufman*, 104 Fed. 768, was decided, and an examination of that case will show that the wife left her household duties to a servant, paid for by her husband, and the decision was covered by the consideration that she was only doing the equivalent of her household duties.

*In re Domenig*, 128 Fed. 147, decided that even where the husband and wife are living together, the wife keeping house and the husband paying the bills and the wife, besides being housekeeper, tends bar when her husband is away from his saloon and puts up free lunches for use therein and cleans up, she can recover her agreed wages at \$8.00 per week; this includes the three months priority. She had worked one year before her husband's bankruptcy. This decision is in spite of

Pennsylvania statute forbidding the wife to testify against or sue the husband. *Nuding v. Urich*, 169 Pa. St. 289, is to the same effect, where the wife works as a cook in the husband's restaurant. This was a case of assignment for benefit of creditors, I believe. *In re Novak*, 101 Fed. 800, makes the wife's claim the basis for involuntary petition against the husband in bankruptcy. *Collier on Bankruptcy*, 8th edition, page 704, lays down the rule that where the common law disability of the wife has been abolished by statute, she may have a claim against her husband's claim in bankruptcy even though the statute prohibits suit against her husband.

It has been held that the wife might sue alone for the protection of a note acquired by her before marriage against her husband.

36 Cal. 447, *Wilson v. Wilson*.

Counsel wishes to call the attention of the court to *Roche v. Union Trust Co.*, 52 N. E. 612 (Indiana), a case of assignment for the benefit of creditors. The wife recovers on notes given her by the husband for money loaned by her to him, the money having been earned by her work as clerk in his store. This decision is in spite of the Indiana statute. *Horner's Rev. Statutes* 1897, Sec. 1530: "A married woman may carry on any trade or business and perform any labor or service on her sole and separate account. The earnings and profits of any married woman accruing from her trade, business, services or labor, other than labor for the husband or family, shall be her sole and separate property." Place this statute beside either the

California statute or the New York statute referred to in Kaufman, 104 Fed. 768, and we will see that the Indiana statute is by far the most unfavorable to the wife's contentions, and yet in the most carefully considered case I have been able to find, the said case of Roche v. Union Trust Co., above referred to, the court held that the wife could recover.

In the said decision the following cases are referred to:

29 N. W. 588 (Minn.), Riley v. Mitchell.

Wife gets judgment against stranger for board.

63 N. W. 461 (Iowa), Carse v. Reticker.

Wife gets money for boarding prisoners at \$.50 per day, her husband being sheriff.

36 N. J. Law 481, Peterson v. Mulford.

Wife earns money and buys assignment of mortgage against husband and recovers it against husband's estate.

23 Atlantic 856 (Vermont), Potter v. Potter.

Wife boarding father can recover the money therefor instead of husband.

38 Ill. App. 480, Woodyatt v. Connell.

Wife rents farm from husband and raises crops. Crops were hers.

In conclusion respondent contends that no fair-minded person can say but that a wife who, in addition to her duties at home, puts her shoulder to the wheel and does a day's work according to a man's standard,

either for strangers or for husband in a business proposition at an agreed scale of wages, is doing what she is neither morally or legally obliged to do.

We do not contend that she is entitled to wages by implication in the absence of agreement for compensation—still she might be. Nor do we contend that she should be entitled to wages for house work. The marriage status is beyond the power of the parties to alter by contract except that they may agree in writing for an immediate separation. But the business labors of a wife are a business proposition; she does not have to hire or be hired; even *Blaechinska v. Howard Mission*, 130 N. Y. 497, admits that the wife need not render said services even at husband's command.

If the claim of Nellie M. Crandall is disallowed it will in effect be compelling her to support her husband; it will be taking away the fruits of her labors which manifestly, as is admitted on all hands, she could convert into money at the hands of an outside employer, and is placing them in the hands of the husband's creditors, while allowing her not even the protection of an average workman. The only difference is that the workman would not have trusted Crandall for half his wages for over a year and Crandall would have gone on the rocks the sooner but for his wife's faithful assistance and forbearance.

Respectfully submitted,

J. W. MORIN,

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